

1 Plaintiff purports to invoke jurisdiction pursuant to 28 U.S.C. §1331 and
2 supplemental jurisdiction pursuant to 28 U.S.C. §1367. Guaranty admits this
3 Court would have jurisdiction pursuant to 28 U.S.C. §1331, as Plaintiff has
4 alleged claims under 15 U.S.C. §2301 et seq. Further, Guaranty admits that this
5 Court has supplemental jurisdiction pursuant to 28 U.S.C. §1367. Guaranty
6 demands a Jury Trial.
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10 2. For its response to Paragraph 2 of the Complaint, Guaranty admits for
11 purposes of the Complaint that the word "Plaintiff" shall refer to Plaintiff Mark
12 Houston. Except as admitted, Guaranty denies each and every allegation
13 contained in Paragraph 2.
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16 3. For its response to Paragraph 3 of the Complaint, Guaranty admits for
17 purposes of the Complaint that the word "Guaranty" shall refer to Defendant
18 Guaranty RV, Inc. Except as admitted, Guaranty denies each and every allegation
19 contained in Paragraph 3.
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22 **FIRST CAUSE OF ACTION**

23 BY PLAINTIFF AGAINST GUARANTY 24 BREACH OF IMPLIED WARRANTY-SONG BEVERLY CONSUMER 25 WARRANTY ACT

26 4. For its response to Paragraph 4 of the Complaint, Guaranty admits
27 the allegations contained in Paragraph 4.
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29 5. For its response to Paragraph 5 of the Complaint, Guaranty is without

1 sufficient knowledge or information to form a belief as to the truth of the
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3 allegations contained in Paragraph 5 and on that basis denies same.

4 6. For its response to Paragraph 6 of the Complaint, Guaranty admits
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6 that the box indicating that the primary use for which Plaintiff was purchasing the
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8 vehicle was for personal, family or household purposes was checked on the Retail
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10 Installment Sale Contract, however, Guaranty lacks sufficient information and
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12 belief as to whether Plaintiff in fact used the vehicle primarily for those purposes
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14 and on that basis denies same. Except as admitted, Guaranty denies each and
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16 every allegation contained in Paragraph 6.

17 7. For its response to Paragraph 7 of the Complaint, Guaranty denies
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19 that during the first year of Plaintiff's ownership of the vehicle that it was unfit for
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21 the purposes for which it was intended and denies that it would not pass without
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23 objection in the trade. Guaranty further denies that the vehicle contained defects
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25 such as improperly installed satellite dish or solar panels which allowed water to
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27 intrude into the vehicle causing substantial damage to the vehicle. Except as
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29 admitted, Guaranty denies each and every allegation contained in Paragraph 7.

8. For its response to Paragraph 8 of the Complaint, Guaranty lacks
sufficient information and belief as to the allegations contained in Paragraph 8 and
on that basis denies same.

9. For its response to Paragraph 9 of the Complaint, Guaranty admits the

1 allegation contained in Paragraph 9.

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3 10. For its response to Paragraph 10 of the Complaint, Guaranty admits
4 the allegation contained in Paragraph 10.

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6 11. For its response to Paragraph 11 of the Complaint, Guaranty admits
7 the allegation contained in Paragraph 11.

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9 12. For its response to Paragraph 12 of the Complaint, Guaranty admits
10 the allegation contained in Paragraph 12.

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12 13. For its response to Paragraph 13 of the Complaint, Guaranty lacks
13 sufficient information and belief as to the allegations contained in Paragraph 13
14 and on that basis denies same.

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16 14. For its response to Paragraph 8 of the Complaint, Guaranty lacks
17 sufficient information and belief as to the allegations contained in Paragraph 8 and
18 on that basis denies same.

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20 15. For its response to Paragraph 15 of the Complaint, Guaranty denies
21 the allegations contained in Paragraph 15.

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23 16. For its response to Paragraph 16 of the Complaint, Guaranty denies
24 the allegations contained in Paragraph 16, as Plaintiff may only bring an action for
25 recovery of damages, but is not “entitled to restitution.”

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28 17. For its response to Paragraph 17 of the Complaint, Guaranty lacks
29 sufficient information and belief as to the allegations contained in Paragraph 17

1 and on that basis denies same.

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3 18. For its response to Paragraph 18 of the Complaint, Guaranty denies
4 the allegations contained in Paragraph 18, as Plaintiff must prevail first under
5 Civil Code §1794(d), before Plaintiff is entitled to attorney's fees.
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7 **SECOND CAUSE OF ACTION**

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9 **BY PLAINTIFF AGAINST GUARANTY**
10 **BREACH OF IMPLIED WARRANTY-MAGNUSON-MOSS WARRANTY ACT**

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12 19. For its response to Paragraph 19 of the Complaint, Guaranty does not
13 have sufficient information or belief as to the allegations contained in Paragraph
14 19, and on that basis denies same.
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16 20. For its response to Paragraph 20 of the Complaint, Guaranty denies
17 that it breached the state-law for implied warranty of merchantability. Further,
18 Guaranty does not have sufficient information or belief as to the remaining
19 allegations contained in Paragraph 20, and on that basis denies same.
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22 21. For its response to Paragraph 21 of the Complaint, Guaranty denies
23 that it breached any implied warranties of merchantability and on that basis must
24 deny that "Plaintiff is entitled to the equitable remedies of rescission and
25 restitution and/or damages." Further, Guaranty does not have sufficient
26 information or belief as to the remaining allegations contained in Paragraph 21,
27 and on that basis denies same.
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1 22. For its response to Paragraph 22 of the Complaint, Guaranty does not
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3 have sufficient information or belief as to the allegations contained in Paragraph
4 22, and on that basis denies same.

5 23. For its response to Paragraph 23 of the Complaint, Guaranty denies
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7 the allegations contained in Paragraph 23, as Plaintiff must prevail first under 15
8 U.S.C. §2310(d)(2), before Plaintiff is entitled to attorney's fees.

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10 **THIRD CAUSE OF ACTION**

11 BY PLAINTIFF AGAINST GUARANTY
12 NEGLIGENCE
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14 24. For its response to Paragraph 24 of the Complaint, Guaranty denies
15 the allegations contained in Paragraph 24.

16 25. For its response to Paragraph 25 of the Complaint, Guaranty denies
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18 the allegations contained in Paragraph 25. Further, Guaranty asserts that Plaintiff
19 failed to bring his claim for negligence in a timely manner and therefore is barred
20 by the statute of limitations.
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22 26. For its response to Paragraph 26 of the Complaint, Guaranty denies
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24 that it was negligent or careless or that it caused any water leak at the time of or
25 shortly after Plaintiff's purchase of the vehicle. Guaranty does not have sufficient
26 information or belief as to the remaining allegations contained in Paragraph 26,
27 and on that basis denies same.
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 27. For its response to Paragraph 27 of the Complaint, Guaranty denies

1 the allegations contained in Paragraph 27.

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3 **FIRST AFFIRMATIVE DEFENSE**

4 28. Plaintiff's Complaint fails to facts sufficient to state a claim upon
5 which relief may be granted.
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7 **SECOND AFFIRMATIVE DEFENSE**

8 29. Plaintiff has failed to join a necessary or indispensable party as a
9 Defendant and the action should therefore be dismissed or an order requiring
10 joinder of such party entered.
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13 **THIRD AFFIRMATIVE DEFENSE**

14 30. Plaintiff has failed to perfect service on Guaranty.
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16 **FOURTH AFFIRMATIVE DEFENSE**

17 31. Plaintiff has failed to mitigate his damages, if any.
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19 **FIFTH AFFIRMATIVE DEFENSE**

20 32. If Plaintiff sustained any damages as alleged in the Complaint, that
21 damage was proximately caused and contributed to by Plaintiff in failing to
22 conduct himself in a manner ordinarily expected of reasonably prudent persons in
23 the conduct of their affairs and business. The contributory negligence and fault of
24 Plaintiff diminish any recovery herein.
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28 **SIXTH AFFIRMATIVE DEFENSE**

29 33. Plaintiff has failed to join all persons and entities necessary for a full

1 and just adjudication of each cause of action asserted in the complaint, and
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3 Guaranty alleges that if Plaintiff sustained any injury, it was caused, in whole or in
4 part, by the negligence or wrongful conduct of other persons or entities who were
5 not named as defendants in the complaint.
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7 **SEVENTH AFFIRMATIVE DEFENSE**

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9 34. Plaintiff's causes of action for breach of express and implied
10 warranties and incidental and consequential damage are barred or limited by the
11 express disclaimers and limitations of liability contained in the alleged express
12 warranties or other agreements made by Guaranty. These disclaimers bar or limit
13 Plaintiff's recovery herein.
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16 **EIGHTH AFFIRMATIVE DEFENSE**

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18 35. Any cause of action alleged in the complaint is barred by the statute
19 of limitations, whether contained in Code of Civil Procedure, sections 337, 338,
20 339, 340, 343, Commercial Code section 2725, Guaranty's warranty, Civil Code
21 Section 1783, or otherwise.
22

23 **NINTH AFFIRMATIVE DEFENSE**

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25 36. Guaranty is informed and believes and based thereon alleges that
26 Plaintiff has engaged in conduct and activity sufficient to estop him from asserting
27 all or any party of any claim set forth in his complaint.
28
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TENTH AFFIRMATIVE DEFENSE

37. Guaranty is informed and believes and based thereon alleges that Plaintiff's claims and relief sought are barred by reason of the doctrine of unclean hands.

ELEVENTH AFFIRMATIVE DEFENSE

38. Guaranty is informed and believes and based thereon alleges that Plaintiff has engaged in conduct and activities sufficient to constitute a waiver of any alleged breach of contract, breach of warranty, negligence or any other conduct as set forth in the complaint.

TWELFTH AFFIRMATIVE DEFENSE

39. Guaranty is informed and believes and based thereon alleges that Plaintiff waited an unreasonable period of time to complain of the alleged acts or omissions at issue in the complaint so as to prejudice Guaranty. Plaintiff is therefore guilty of laches and barred from recovery.

THIRTEENTH AFFIRMATIVE DEFENSE

40. Guaranty is informed and believes and based thereon alleges that any failure to perform the obligations as described in the complaint resulted from Plaintiff's failure to perform as required by the contract and/or warranty. Performance on Plaintiff's part of his obligations was a condition precedent to the performance of Guaranty's obligations.

FOURTEENTH AFFIRMATIVE DEFENSE

41. The Recreational Vehicle was not defective or in an unmerchantable condition at any time when it left the possession, custody and control of Guaranty. Any damage to the Recreational Vehicle was caused and created by changes and alterations made to the Recreational Vehicle, subsequent to the time of the Recreational Vehicle's sale, by persons other than Guaranty or any of its agents, servants, or employees, thereby barring Plaintiff's recovery therein.

FIFTEENTH AFFIRMATIVE DEFENSE

42. The complaint fails to state sufficient facts to warrant the imposition of a civil penalty.

SIXTEENTH AFFIRMATIVE DEFENSE

43. Guaranty did not manufacture, warrant, or distribute the Recreational Vehicle.

SEVENTEENTH AFFIRMATIVE DEFENSE

44. Plaintiff is barred from recovery by virtue of Civil Code Section 1794.3, and other laws, since the claimed defects or nonconformities were caused by the unauthorized or unreasonable use of the Recreational Vehicle following sale.

TWENTY-FIRST AFFIRMATIVE DEFENSE

45. Plaintiff has waived his right to seek restitution or rescission-type

1 damages against Guaranty as a matter of law, or, as an alternative, Guaranty is
2 entitled to an equitable setoff for use of the Recreational Vehicle.
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4 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

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6 46. Plaintiff failed to properly revoke acceptance by either failing to
7 notify within a reasonable amount of time and/or before substantially altering or
8 changing the product.
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10 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

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12 47. Plaintiff's complaint fails as a matter of law due to his failure to
13 provide notice and give Guaranty an opportunity to cure any alleged defects or
14 non-conformities.
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16 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

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18 48. Plaintiff's complaint fails as a matter of law due to his use of the
19 Recreational Vehicle for business purposes and/or the Recreational Vehicle is not
20 a consumer good and is normally used for business purposes.
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23 **PRAYER**

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25 WHEREFORE, Defendant, Guaranty RV, Inc. prays as follows:

- 26 1. That Plaintiff takes nothing by way of his Complaint;
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28 2. That Guaranty recover from Plaintiff its cost of suit incurred herein,
29 reasonable attorney's fees, and expert witness fees; and

1 3. For such further relief as the Court deems just and proper at law or in
2 equity.
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4 DATED: June 13, 2008

Respectfully Submitted,
THE MILES LAW FIRM

6
7 /s / Brady D. McLeod
8 Brady D. McLeod
9 Attorneys for Defendant
10 Guaranty RV, Inc.
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DECLARATION OF MAILING

I am, and was at the time the herein mentioned mailing took place, a citizen of the United States, over the age of eighteen (18) years and not a party to the above-entitled cause.

I am employed by The Miles Law Firm and my business address is 3838 Watt Avenue, Suite C-301, Sacramento, California, 95821.

On the date that this Declaration was executed, as shown below, I served the foregoing:

ANSWER OF DEFENDANT GUARANTY RV, INC. TO COMPLAINT

by First Class Mail, postage prepared, at Sacramento, County of Sacramento, State of California to:

Terry L. Baker

Makler & Baker LLP

226 E. Canon Perdido Street, Ste. J

Santa Barbara, CA 93101

Attorneys for Plaintiff

Mark Houston

I declare the above true under penalty of perjury. Executed on June 13, 2008, at Sacramento, California.

/s / Betty Thomas

Betty Thomas